

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 21-CR-5 (BHL)

JOHN D. WHELAN,

Defendant.

JOINT STATUS REPORT

The United States of America, by and through its undersigned attorneys, and Defendant John D. Whelan, by and through his undersigned attorneys, hereby respectfully submit this Joint Status Report and state as follows:

1. Defendant Whelan was indicted for conspiring to distribute controlled substances outside the course of a professional medical practice and not for a legitimate medical purpose, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846; maintaining a drug-involved premises, in violation of 21 U.S.C. § 856(a)(1); and making false statements to federal agents, in violation of 18 U.S.C. § 1001. *See* Dkt. No. [1]. He was arraigned in January 2021 and pled not guilty. *See* Dkt. No. [5].
2. This matter was most recently set for trial on February 27, 2023. *See* Dkt. No. [62].
3. On October 25, 2022, Defendant Whelan's counsel sent government counsel

correspondence expressing Defendant Whelan's intention to raise an insanity

- defense at trial. Appended to defense counsel's letter was a report by Dr. Gerald Shiener, who concluded that (i) Defendant Whelan was not able to understand the nature and quality or the wrongfulness of the misconduct described in the indictment; and (ii) Defendant Whelan was not competent to stand trial in this matter.
4. The parties conferred regarding this correspondence on October 26, 2022, and October 31, 2022.
 5. On October 31, 2022, Defendant Whelan's counsel filed a Notice that reflected his intention to raise an insanity defense at trial. *See* Dkt. No. [65]. The Notice does not address Dr. Shiener's conclusion that Defendant Whelan is not competent to stand trial. *Id.*
 6. On November 1, 2022, the Court asked the government to file a response to the Notice. *See* Dkt. No. [66]. The government was specifically instructed to address whether it objects to the Notice as untimely and what effect, if any, the Notice had on the February 2023 trial date. *Id.*
 7. On November 11, 2022, the government filed a combined Motion for Psychiatric Examination and Response to Defendant Whelan's Insanity Notice. *See* Dkt. No. [67]. The government explained that in light of Dr. Shiener's report, it believed the Court should (i) order a psychiatric evaluation of Defendant Whelan, to determine both his competency and his capacity to understand the nature and quality or the wrongfulness of his conduct; (ii) forego ruling on the Notice's timeliness until Defendant Whelan's competency hearing is completed; and (iii)

- set a counsel-only status conference in the coming days to discuss these issues, as the current trial date likely cannot stand given recent developments.
8. After the requested status conference, the parties submitted additional briefs regarding, *inter alia*, the form of the contemplated psychiatric evaluation. *See* Dkt. Nos. [73, 74, 75, 76].
 9. The Court then granted the government's motion for an evaluation. *See* Dkt. No. [80]. The Court ordered that, *inter alia*, Defendant Whelan submit to an "out-of-custody" examination designed to address both his competency and sanity. *Id.* The Court also ordered the parties to meet-and-confer regarding a mutually acceptable psychiatrist or psychologist to conduct the examination. *Id.*
 10. The parties have corresponded regarding various candidates, and they now jointly recommend that the examination be conducted by Dr. Sara Swanson. The parties will work together with Dr. Swanson to schedule the necessary evaluations. Once those evaluations are scheduled, the parties will file another joint status to update the Court about when it can expect Dr. Swanson's report. To the extent the Court desires an additional status date before receiving Dr. Swanson's report, the parties will make themselves available at the Court's convenience.
 11. The parties request that the Court make a speedy trial finding that time is excluded pending the receipt of Dr. Swanson's report and the scheduling of a subsequent status conference.

Dated at Milwaukee, Wisconsin, this 16th day of January, 2023.

Respectfully submitted,

GREGORY J. HAANSTAD
United States Attorney

By: s/ Kevin C. Knight
Julie F. Stewart
Kevin C. Knight
Assistant United States Attorneys

&

JOHN D. WHELAN
Defendant

By: s/ Meggan B. Sullivan
Ronald Chapman II
Meggan B. Sullivan
Counsel for Defendant Whelan